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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

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FURTHER COMMENTS

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BellSouth Comments

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SUMMARY

Definitions Issues

The record in this proceeding establishes that the current rates for the services that would be deemed within the definition of core universal services should be considered affordable. In establishing a universal service plan, the Commission could establish affordability benchmarks and provide universal service support to eligible carriers whose costs of providing universal service exceed the affordability benchmark. In setting an affordability benchmark, BellSouth believes that the Commission should take into account average income level within an state. The income factor used in setting the affordability benchmark must be disaggregated below a national average, otherwise states with income levels below the national average would become responsible for funding a proportionately larger amount for universal service making it potentially more difficult to ensure affordable service in these states. In its Comments, BellSouth describes a proxy cost model. As BellSouth explains, it is critical that, if the Commission proceeds to establish a universal service plan based on such a model, implementation of that plan be accomplished in a revenue neutral manner. A universal service approach that is not grounded in revenue neutrality at the start will arbitrarily harm some companies.

Schools, Libraries, and Health Care Providers

The Commission should adopt a Funds to Schools ("FTS") approach for implementing the universal service discount program for schools and libraries. Under FTS, the support fund size would be based upon the McKinsey Partial Classroom model, the amount of the fund would be known from the outset, and each school or library would have the flexibility to utilize its allotted support for telecommunication services as needed.

The FTS approach would promote competition by incenting telecommunications service providers to offer creative solutions to schools and libraries which can enable schools and libraries to make the best use of their total universal service support allotment, either on an individual basis or in sharing arrangements among multiple eligible entities. The competitive process could be utilized to drive prices to market levels, with universal service support applied to the resulting rates. The FTS approach could also easily accommodate a determination by the Commission to adjust base amounts of support upward for individual schools and libraries deemed to be in need of above-average support.

In implementing the FTS approach and establishing means to determine bona fide requests, the Commission should find ways to assure that recipients have plans to utilize such support consistent with an educational technology plan. The Commission should not impose additional, burdensome mechanisms upon recipients, but rather should find ways to utilize existing channels at the state, school district, or local level as may be appropriate.

General Questions

The existing high cost fund is not sufficient to address funding of universal service as required by the Telecommunications Act of 1996. The high cost fund should be replaced by a new, comprehensive federal universal service fund. In establishing this new funding mechanism, BellSouth has advocated that support for eligible carriers be based on the incumbent LEC's book costs. The advantages of such an approach are that book costs provide a reliable estimate of the cost of providing service in an area. Further, book costs are not theoretical costs but, instead, are grounded on the actual cost involved in building and operating a network throughout the area being served.

Moreover, basing payments initially on an incumbent's book costs encourages competitors with incremental costs lower than the incumbent's incremental costs to eventually win over the incumbent's customers. By receiving the full amount of the support received by the incumbent, the more efficient competitor could offer the same service at a price below that set by policy. Portable payments mean that the most efficient competitor eventually serves the customer and at the same time provides a strong incentive for the incumbent to become more efficient.

Regardless of the approach used to establish a fund, once established, any carrier designated as an eligible carrier is entitled to receive universal service support in accordance with the plan. The Commission cannot limit support on the basis of how the Commission classifies a carrier, such as a price-cap or non-price cap LEC.

Proxy Models

A proxy model must be properly specified in order to produce a reasonable result; *i.e.*, it should produce costs that will ensure that the universal service support is sufficient to attract telecommunications service providers. A properly specified model will estimate the forward looking cost of providing only the defined universal service core services, although it should include a reasonable share of joint and common costs.

Because a proxy model produces hypothetical costs that are not specific to, or even necessarily representative of, a service provider's actual book costs, the possibility exists for book costs to exceed substantially the costs produced by a proxy model. Since service providers have to recover their actual-not hypothetical- costs to remain viable, it is critical that alternative recourse be available to those providers for whom support payments are insufficient to recover their costs. Thus, if a proxy model is adopted, it is imperative that the approach be implemented in a revenue neutral manner. If a company is forced to reduce rates by more than it receives out to the universal service fund, then that would abrogate the federal price regulation plan that is in place, and it could well result in confiscation.

So long as the new universal service fund is implemented in a revenue neutral manner, incumbent LECs will continue to have an incentive to invest in their infrastructure. Further, if support is set at a sufficient level, then multiple companies will have the incentive to provide universal service in a given area.

The outcome of a proxy model should be technologically neutral. Any carrier that is an eligible carrier would be able to collect universal service support regardless of the technology it uses to provide service.

Competitive Bidding

Any bidding process would be subject to considerable opportunities for gaming that effectively preclude competitive bidding from being considered as a means for funding universal service.

Benchmark Cost Model

BellSouth will provide a Benchmark cost model analysis in comments August 9.

SLC/CCL

If the Commission adopts a methodology that results in universal service support that is inadequate to eliminate the interstate CCL charge, then local exchange carriers must be afforded the flexibility to recover what CCL amounts remain in a way other than through a per minute of use charge. Alternative recovery approaches would include bulk billing and/or flat rate per line charges.

Low-Income Consumers

BellSouth supports including a low income element as part of the new universal service fund. In order to implement the new program as simply as possible, the Lifeline subsidy should continue to be linked to the amount of the subscriber line charge.

Administration of Universal Service Support

At this time there is no data available to estimate the administrative costs associated with the various methods that could be used to calculate a carrier's funding obligation. Nevertheless, a retail revenue approach, as suggested by BellSouth, is a straightforward means of determining a carrier's funding obligation. Accordingly, a priori, it would appear that such an approach would be simple and not particularly difficult or costly to implement.

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Federal-State Joint Board
on Universal Service

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CC Docket No. 96-45

COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. (BellSouth) hereby submit their comments on the specific questions set forth in the Public Notice (DA 96-1078) released July 3, 1996.

Definitions Issues

1. Is it appropriate to assume that current rates for services included within the definition of universal service are affordable, despite variations among companies and service areas?

The record in this proceeding establishes that the current rates for services included within the definition of universal service (i.e., voice grade residential local exchange service and touchtone) are affordable. While there are variations in rates among companies and service areas, subscription rates are generally high in all states. Moreover, local exchange service rates, in general, have declined in real terms over the last decade, and this is especially true in BellSouth's states. Dr. Gordon and Dr. Taylor, of National Economic Research Associates Inc., showed in their analysis (submitted with BellSouth's Comments and hereinafter Gordon and Taylor) that, if anything, local rates could actually be higher in many cases without any significant impact on affordability. The essential fact, however, is that state commissions are responsible for ensuring that basic local exchange service is affordable, and they take a wide variety of factors into

consideration in setting rates. They give weight to factors such as size of calling area, income level, etc.

2. To what extent should non-rate factors, such as subscribership level, telephone expenditures as a percentage of income, cost of living, or local calling area size be considered in determining the affordability and reasonable comparability of rates?

The state commissions already consider numerous factors in determining local service rates. Most, if not all, of the factors enumerated in the question are relevant for determining affordability. For example, the methodology suggested in Gordon and Taylor (pp. 30-35) uses information on subscribership level, telephone expenditures as a percentage of income, cost of living (through CPI or CPI-like values over time and possibly by state), household income level (especially the poverty threshold level), etc.

In developing a universal service plan, the Commission could establish affordability benchmarks and provide universal service support for any costs which exceed the benchmarks. The benchmarks will also ensure that rates are "reasonably comparable" in all areas.

The main non-rate factor which should be considered in setting affordability benchmarks is average income level within an area. Affordability benchmarks could be set at the state level based on a percentage of average household income. Given that overall telecommunications expenditures (including long distance and vertical services) generally average around two percent of the average household income, a benchmark for universal service based on one percent of the average household income would appear reasonable. This benchmark rate would apply to basic residential local service and touchtone. Under a proxy model system for calculating support, the affordability benchmark rate simply provides that level at which funding from the federal universal

service support mechanism would commence. It would not mean that local service rates need to be raised to the affordability benchmark. Individual states would be responsible for funding any difference that may exist between actual service rates and the affordability benchmark rates. (See the response to question number 3 for a description of how a proxy model system with affordability benchmarks would operate)

3 When making the “affordability” determination required by Section 254(i) of the Act, what are the advantages and disadvantages of using a specific national benchmark rate for core services in a proxy model?

The most significant advantage of a national affordability benchmark rate for core services is its simplicity. A benchmark, however, should reflect average state income. If average income level by state is not considered, states with income levels below the national average would become responsible for a proportionately larger part of the problem of funding universal service. A simple example illustrates why this is so. Assume there are two states; state A has an average income level of \$20,000 and state B has an average income level of \$40,000. The average income level of the two states is \$30,000 and a benchmark rate based on 1% of the average income level for all states would be \$25.00 per month. Under a proxy model system, the federal fund would handle any costs above \$25.00. The states would be responsible for funding universal service up to the benchmark level. Thus, state A would have to find ways to fund the same amount as state B even though it has a lower per capita income level. Even an intrastate universal service fund would be dependent on raising funds from services provided within the state. Thus, a national benchmark could make it more difficult to ensure affordable service in states with income levels below the national average.

The essential predicate of this question is an understanding of the way in which a proxy model would work. The following illustrates a universal service approach that incorporates benchmark affordability rates and a proxy cost model.

Description of The Proxy Cost Approach

If an approach based on proxy costs and affordability benchmarks is adopted, it should operate as follows:

Step 1: Determine affordability benchmark rate(s) (ABR). This should be done at the state level based on a percentage of average income. The ABR would be used to determine the level at which federal universal service funding would commence.

Step 2: Calculate proxy costs for small geographic areas such as census block groups or grid cells. A cost proxy model such as the Benchmark Cost Model 2 or the Cost Proxy Model could be used.

Step 3: For each small geographic area, compare the proxy cost to the affordability benchmark rate. In general, the amount by which the proxy cost exceeds the ABR would be funded out of the federal fund. Then, to the extent that actual rates are below the ABR, the state would be responsible for funding the difference. Examples A-E (which follow) discuss how to calculate federal fund support and state fund support for every possible scenario. The per line support amount would be made available to any eligible carrier.

Step 4: Determine the total support to be provided out of the federal fund for each local exchange company by state.

Step 5: Require local exchange companies to lower their rates for non-universal service services by the net amount of universal service support initially received. Since it is a federal fund

that is being created, the first place to look for rate reductions would be in those federal rate elements that are currently considered to be implicit support for universal service. Thus, if the federal fund is sufficient, the interstate CCL and residual interconnection charges could be reduced to zero. If the federal fund amount exceeds the amount of support that is necessary to reduce interstate CCL and RIC charges, then intrastate rates for non-core services should be reduced by the remaining amount. Intrastate switched access rates, i.e., intrastate CCL and interconnection charges, would be an obvious target for rate reductions within the state.

It is critical that the initial funding of universal service be accomplished on a revenue neutral basis. Thus, rates should be reduced by the same amount as is initially received from the fund. Embedded costs may exceed proxy costs for a given area and there are numerous reasons why this could occur. Companies need to have the opportunity to continue to recover these actual costs. Regulators should not arbitrarily foreclose the opportunity of companies to recover their actual costs by requiring rate reductions in excess of what is provided out of the fund. Such an approach would erroneously assume that proxy costs are appropriate for rate setting. Proxy costs are simply theoretical costs, and they indicate which areas are relatively high cost to serve. They should never be mistaken for actual costs. Any universal service funding approach that is not grounded in revenue neutrality at the start will arbitrarily and capriciously harm some companies.

Example of Proxy Cost Calculations

	ABR	Proxy Cost	Federal Support Per Line	No. of Lines	Monthly Federal Support	Actual Rate	State support per line
State X							
Area A	\$30	\$50	\$20	100	\$2000	\$27	\$3
Area B	\$30	\$2	0	200	0	\$27	\$0
Area C	\$30	\$3	0	250	0	\$27	\$3
State Y							
Area D	\$25	\$3	\$5	300	\$1500	\$21	\$4
Area E	\$25	\$2	0	150	0	\$21	\$0

Assume that ACME Telephone Company serves two states (X and Y). The proxy cost model calculates support for areas A-E. Upon implementation of the federal fund, Acme Telephone Company would receive federal universal service support equal to \$3500 and it would correspondingly reduce its rate by \$3500. Of course, the federal universal service support would be available to any “eligible carrier.” Thus, if Acme loses universal service lines in Area A, its support would be reduced accordingly. Similarly, if it gains lines in Area A, its support would correspondingly increase.

Examples A-E which are set forth in Appendix 1 demonstrate how to calculate the federal fund support under various scenarios.

- 4 What are the effects on competition if a carrier is denied universal service support because it is technically infeasible for that carrier to provide one or more of the core services?

The core set of services proposed in this proceeding to constitute universal service are so elementary and basic, that no company could have difficulty providing these core services and, accordingly, there should be no impact on competition.

Of course, some companies may not want to have to provide service throughout a given area. These niche providers would not be eligible for universal service support. Competition will not be harmed by such a scenario. Fair competition will be promoted throughout a given area because all companies will have the opportunity to qualify as universal service providers and receive support. With the exception of an incumbent LEC, each company is free to make a business decision whether to be a universal service provider. Such freedom of choice epitomizes competitive markets.

- 5 A number of commenters proposed various services to be included on the list of supported services, including access to directory assistance, emergency assistance, and advanced services. Although the delivery of these services may require a local loop, do loop costs accurately represent the costs associated with providing core services? To the extent local loop costs do not fully represent the costs associated with including a service in the definition of core services, identify and quantify other costs to be considered.

Loop costs represent the great majority of the cost of providing universal service. If loop costs are calculated on a fully distributed embedded cost basis, they may provide a reasonable estimation of the going forward cost of providing universal service. However, if proxy costs are calculated, they need to account for all of the costs associated with providing universal service.

This would include local switching costs and interoffice transport costs for the local calling area. In addition, joint and common and shared costs must also be considered.

With regard to advanced services, the core set of services identified in the NPRM, when combined with a computer and a modem, will ensure access to the Internet and information services. If the definition of universal service is expanded beyond basic residential voice grade local exchange service, then a new proxy cost model would be needed.

It should be noted that incremental costs associated with access to directory assistance and emergency assistance should be minimal, if they exist at all. While there could be considerable cost involved in actually using these services, that goes beyond universal service and therefore the cost would be covered by non-uniform service rate elements.

Schools, Libraries, Health Care Providers

6. Should the services or functionalities eligible for discounts be specifically limited and identified, or should the discount apply to all available services?

BellSouth proposes that the services or functionalities eligible for discounts should be limited to "telecommunications services" as defined by the Act. The amount of the discount available to each school and library should be limited to the amount allocated to it each year through the "Fund to Schools" ("FTS") approach proposed by BellSouth.

Under the FTS approach, the national universal service fund for schools and libraries would be sized based upon a model which assumes the provisioning of specific telecommunications services or functionalities,¹ to each school or library. The amount allocable

¹ BellSouth supports sizing the fund based upon the Partial Classroom Model described in the Kickstart Initiative which assumes transport connectivity to each school at speeds

to each school and library would be determined, based upon a set of criteria established by the Commission. Then each school or library would be permitted to utilize its allotted support for any "telecommunications service" as defined by the Act. Thus, the school or library would not be limited to those services which were the basis for determining the size of the national fund. Such an approach would permit schools and libraries to tailor their use of universal service support dollars to services which they particularly need and can best incorporate into their educational technology plans. At the same time, the size of the universal service fund would be quantified, allowing for predictability of both the amounts to be contributed to the fund and amounts to be expended from the fund.

In order to make this approach possible, the Commission, in designating those services which are eligible for universal service support discounts under Sections 254(c)(3) and

up to 1.544 mbps. The fund size for libraries could be based upon the Kickstart model for libraries which assumes a variety of means for transport connectivity, up to speeds of 1.544 mbps.

2. The Act defines "telecommunications service" as

the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), Section 153(46) [emphasis supplied]. All citations to the Act herein reference the Section numbers as they will be codified under Title 17 of the United States Code, except for Sections 706 and 708 of the Act. "Telecommunications" is defined as

the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Section 153(43) [emphasis supplied]. Any provider of a "telecommunications service" shall be "treated as a common carrier" to the extent that it is engaged in providing telecommunications services. Section 153(44) [emphasis supplied].

254(h)(1)(B) of the Act, should specify that any “telecommunications services,” as defined by the Act, will be eligible. The Commission should clarify that non-“telecommunications services” are not included within such “special services” category, as BellSouth discusses further in its response to question #7 below.

Section 254(h)(1)(A) of the Act, which establishes universal service support for rural health care providers, is materially different from Section 254(h)(1)(B), and, as such, does not lend itself to a pre-sized fund. Rather than requiring services to be provided at a discounts to be established by the Commission and the states, for interstate and intrastate services, respectively, Section 254(h)(1)(A) requires telecommunications carriers to provide telecommunications services at rates “reasonably comparable” to urban rates.⁵ BellSouth proposes that the services and functionalities which must be made available to rural health care providers at rates reasonably comparable to urban rates should be transport for telemedicine purposes at speeds of up to 1.544 mbps. As with support for schools and libraries, the Commission should clarify that non-“telecommunications services” are not eligible for the “urban rate” nor for universal service support, as BellSouth discusses further in its response to Question #7.

⁵ Specifically, Section 254(h)(1)(A) requires telecommunications carriers to provide “telecommunications services which are necessary for the provision of health care services...at rates that are reasonably comparable to rates charged for similar services in urban areas....” The amount of the support to the service provider is “the difference, if any, between the rates for services provided to health care providers for rural areas and the rates for similar services provided to other customers in comparable rural areas.”

7(a) Does Section 254(h) contemplate that inside wiring or other internal connections to classrooms may be eligible for universal service support of telecommunications services provided to schools and libraries?

Section 254(h) does not contemplate that inside wiring or other internal connections to classrooms may be eligible for universal service support. Inside wiring and other internal connections are not “telecommunications services” within the meaning of the Act.

As a preliminary matter, the Act defines “universal service” as “an evolving level of telecommunications services”⁴. When the Commission defines those services which are eligible for universal service support, it must determine whether “such telecommunications services” meet certain criteria⁵. Section 254(c)(3), which permits the Commission to designate “additional services” eligible for universal service support for schools, libraries and health care providers, merely means that the Commission can designate additional “telecommunications services” which do not fall within the criteria set forth earlier in subsection 254(c) for evaluating telecommunications services eligible for core universal service support. Moreover, Section 254(h), which establishes the right of schools, libraries and rural health care providers, to obtain discounts supported by universal service funding mechanisms is entitled “Telecommunications Services for Certain Providers” and subsection Section 254(h)(1)(B) specifically limits discounts to “telecommunications services.”

⁴ Section 254(c)(1) [emphasis supplied].

⁵ Section 254(c)(1) [emphasis supplied].

The Act's definitions section indicates that any "provider" of a "telecommunications service" shall be treated as a "common carrier" with respect to that service.⁶ If the term "telecommunications service" is deemed to include inside wiring, then, as a result of the definition of "telecommunications carrier," any provider of inside wiring would be a common carrier as to such service, even private electricians or other contractors who provide inside wiring services. The definition of "telecommunications carrier" could then read, substituting "inside wiring" for "telecommunications service" as follows: "Any provider of inside wiring...shall be treated as a common carrier under this Act to the extent that it is engaged in providing inside wiring." This is too broad an interpretation of the Act. The Commission should recognize that Congress intended to limit those services eligible for universal service discounts under Section 254(h) to "telecommunications services," services which are, by definition, common carrier services.

If the Commission's legal authority were read as providing authority to designate services which are not presently common carrier telecommunications services as eligible for universal service support under the Act, then there would be no limitation upon those services which could be designated as eligible for universal service support. Moreover, once designated as a service eligible for universal service support, such a service would, in essence, become a common carrier service. For instance, if the Commission were to deem its legal authority to permit it to designate inside wiring, presently a non-common carrier, non-telecommunications service, as eligible for universal service support discounts under Section 254(c)(3) and 254(h)(1)(B), then its legal

⁶ Section 153(44)

authority would ostensibly permit it to designate as eligible for support any other service which the telecommunications carrier provides.⁷

The Commission must recognize that its legal authority does not include the discretion to designate any non-common carrier, non-telecommunications services as eligible for universal service support. A non-common carrier, non-telecommunications service designated as an eligible service included under Sections 254(c)(3) and 254(h) would no longer have the benefit of non-common carrier status, as the Commission, by such designation, would be invading the purview of the provider of such service “to make individualized decisions in particular cases whether and on what terms to serve.”⁸ A telecommunications carrier deciding whether to offer a non-common carrier service would need consider the fact that, as a telecommunications carrier, it could be required by the Commission to offer such service to all schools, libraries, and rural health care providers at a designated discount, whereas its non-common carrier, non-telecommunications carrier competitors would have no such requirements.

BellSouth recognizes the Commission’s concern that internal connections are necessary for effective use of telecommunications services for learning in the classroom. Since most schools were built without an internal network, retrofitting is necessary. But the responsibility for retrofitting should be defined similarly to the manner in which the needs of schools and libraries for other types of retrofitting, such as air conditioning or increased electrical capacity, are handled.

⁷ A telecommunications carrier may provide not only traditional common carrier services, but also other non-common carrier services, such as customer premises equipment services, enhanced services, credit card services, etc.

⁸ National Association of Regulatory Utility Commissioners v. F.C.C., 533 F.2d 601, 609 (D.C. Cir. 1976).

Nevertheless there may be several ways in which the Commission's concern could be addressed. First, the Commission could review the regulatory status of inside wiring. At the present time, inside wiring is deemed under the Commission's rule to be a non-common carrier service, and the Commission's rules define the location of the demarcation point between common carrier, regulated wiring and non-common carrier deregulated inside wiring.⁹ Internal wiring to classrooms falling within the non-common carrier deregulated category. Of course, the Commission could review these determinations and consider whether it would be appropriate to revise the demarcation point to bring inside wiring within the scope of a common carrier telecommunications provider's common carrier offerings and thus, within the scope of the term "telecommunications service" under the Act.

Another opportunity to address the Commission's apparent internal connections concerns is through the national movement to "wire the schools" by volunteers in "NetDays." In a successful demonstration in California in March, 1996, 20% of the state's schools connected five classrooms or more to the local telecommunications network. Forty-one states have organized schools, businesses, and community members to implement "NetDay" in October 1996. While volunteerism may not be the sole source of inside wiring, it stimulates the support of the local community and school board and provides a foundation for demonstrating the value of telecommunications services to education.

⁹ Modifications to the Uniform System of Accounts for Class A and B Telephone Companies, 48 Fed. Reg. 50534 (Nov. 2, 1983); Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, Second Report and Order, released February 24, 1986, 47 C.F.R. Section 68.3.

BellSouth will be an active participant in states in the southern region that have committed to NetDay. Beyond the corporations' involvement in wiring the schools, the BellSouth Foundation has committed almost one million dollars for special technology initiatives through the year 2000 as well as a portion of the \$7.5 million in grants it will award over the next five years. Indeed, another important way in which funding for inside wiring could be obtained would be through the support of private foundations such as this, as well as through government grants and bond issues. An additional funding source is the National Education Technology Funding Corporation ("NETFC"), to which Section 708 of the Act refers. It is encouraging that the Commission makes specific reference to the NETFC in the instant questions as, hopefully, this will increase awareness of this funding and support vehicle and will encourage greater utilization of it by both contributors to and recipients of its benefits.

7(b) If so, what is the estimated cost of the inside wiring and other internal connections?

The cost of inside wiring for schools is expected to be substantial. For instance, the McKinsey Report estimates that the cost of internal connections in the Partial Classroom model would be more than \$ 5 billion for initial costs and \$410 million annually in ongoing costs.¹⁰ Another estimate, provided by the Florida Department of Education through its "Retrofit for Technology Project," is that retrofitting schools for inside wiring would cost an average of approximately \$220,000 per school.

¹⁰ McKinsey Report, Appendix A, p. 57, Ex. 16.

8 To what extent should the provisions of Sections 706 and 708 be considered by the Joint Board and be relied upon to provide advanced services to schools, libraries and health care providers?

The Joint Board should consider such provisions, but should not confuse them with the requirements of Section 254. It is BellSouth's view that both Section 706 and Section 708 can provide useful vehicles for enhancing the availability of telecommunications services and technology to schools, libraries and health care providers. Thus, the Commission's determination regarding the scope of Section 254(h) need not be made with a view that Section 254(h) itself must be the single-source cure-all for all telecommunications service and technology needs of public institutional telecommunications users.

Whereas Section 254 contemplates the defining of specific telecommunications services eligible for universal service support as well as the amount of such support to be provided by the universal service funding mechanism, Section 706 enables the Commission to provide incentives which would assist in "remov[ing] barriers to infrastructure investment" related to "advanced telecommunications capability."¹¹ This can provide a useful counterpart to Section 254 universal service funding support mechanisms. For instance, the provisions of Section 254(h) do not impose the requirement that telecommunications carriers must make uneconomic, untimely, or uncompensated infrastructure investments. Rather, it contemplates existing services and existing infrastructure, and services provided thereunder must be pursuant to "bona fide" requests and paid for pursuant to the universal service support mechanism. Under Section 706, however,

¹¹ "Advanced telecommunications capability" is defined as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." Section 706(c)(1).

means could be developed to encourage infrastructure deployment to increase the availability of an advanced technology to schools and libraries on a faster track and broader base than might otherwise occur.

Section 708 is an example of other funding vehicles and support mechanisms which can be utilized to advance the availability and usefulness of telecommunications services and technology for schools and libraries. Indeed, BellSouth is pleased that the Commission has addressed this section of the Act in these questions because this is likely to increase awareness of the existence of the National Education Technology Funding Corporation and to spur greater visibility of the mechanisms it offers for support of the Commission's education technology goals. Private and public entities should be encouraged to support and contribute to efforts such as this which can serve as enablers of the advancement of educational technology goals, of which universal service support can and should be only one component.¹²

¹² It is widely understood and accepted that the various elements involved in the effort to make available advanced telecommunications services and technologies to schools for use in a meaningful way involves not only the physical transport capabilities, but also high-quality educational courseware, video programs, and on-line services; curriculum development that uses communications technology; training programs for teachers so they can learn to use the new technology and incorporate it effectively into their classrooms; ongoing technical support; security for equipment; and parental involvement in what their children are doing and learning. See, e.g., FCC News Release, "Reed Hundt Announces New FCC Education Task Force to Ensure That Children's Needs Are Met in Telecom Act Implementation," March 18, 1996. See also U.S. Advisory Council on the National Information Infrastructure, "KickStart Initiative: Connecting America's Communities to the Information Superhighway."

school to determine its particular needs, would be incented to propose creative and flexible service arrangements which best address those needs as well as to maximize the benefits which the available support could provide to the school. The proposals of the various competing entities could then be submitted to the school under competitive bid arrangements, and schools could use their allotted funds to purchase some or all of its service needs from one or a combination of providers. Such a mechanism also permits the pooling of allotted funds by eligible entities as well as individualized decisions by schools and school districts as to which services to apply their universal service funds. Thus under FTS, schools would become an important market force, and competitors' interests in earning the school's business could intensify.¹³

Health care. As discussed above in BellSouth's response to Question #6, an FTS approach would not appear to be possible for rural health care providers, as the Act itself specifies that rates "reasonably comparable" to urban rates are to be charged.¹⁴ In establishing any regulations which interpret and implement the provisions of Section 254(h)(1)(A), the Commission should be cautious so as not to disincent telecommunications providers from actively

¹³ In contrast, a mechanism which requires that straight discounts be provided off of existing rates for existing services, or cost-based formulas such as Total Service Long-Run Incremental Cost ("TSLRIC") models, would not incent competing providers to offer innovative solutions. With discounts off of existing rates for existing services, the school or school district would have less choice as to where to apply its available funds, would achieve fewer benefits by pooling resources, and would be less of a market force. Moreover, if carriers are required to provide discounts off of TSLRIC levels, they may be disincented from providing service to schools, let alone seeking out and competing for the business of schools, given the inadequacy of such a costing approach to fully compensate the carrier for the services provided. Moreover, any requirement to establish TSLRIC levels could entail time-consuming, regulatory cost proceedings which could hamper the ability of telecommunications carriers to act quickly to develop solutions to meet the evolving telecommunications needs of schools and libraries.

¹⁴ Section 254(h)(1)(A).

seeking the business of rural health care providers. If such provisions are implemented in such a way that the provider is not fully compensated through the combination of the rate paid by the rural health care provider and the amount of the universal service support, then providers may not have either the incentive to market their services in rural areas nor to offer innovative solutions. At the same time, a provider could be disincented from lowering its urban rates in order to avoid non-compensatory arrangements in rural areas.

- 10) Should the resale prohibition in Section 254(h)(3) be construed to prohibit only the resale of services to the public for profit, and should it be construed so as to permit end user cost based fees for services? Would construction in this manner facilitate community networks and/or aggregation of purchasing power?

The Act is straightforward in its prohibition against the resale of telecommunications services provided under Section 254(h). Section 254(h)(3) prohibits a public institutional telecommunications user from selling, reselling, or otherwise transferring the service, or network capacity within the service, "in consideration for money or any other thing of value." Although this provision prohibits the sale, resale or transfer of the service, or network capacity within the service, it would not prohibit the sharing of telecommunications services, or network capacity within such services, by multiple eligible public institutional telecommunications users where an FTS approach is used. Under an FTS approach, schools and libraries could pool their allotted amounts to purchase telecommunications service arrangements together on a shared basis which none alone could afford. BellSouth believes that a substantial benefit can be gained by such entities through sharing arrangements.

It appears that this resale prohibition would not prevent a public institutional telecommunications user from charging a fee to others for their use of information services which